

# RFP 13-17 CCDF INTAKE AGENT SERVICES

## CONTRACT COMPLIANCE AND PAY FOR PERFORMANCE

### Performance Standards and Damages

#### I. Consequential Damages – Failure to Meet Contract Requirements

It is expressly agreed by the State and the Contractor that, in the event of a failure to meet the performance requirements listed below, damage shall be sustained by the State, and the Contractor shall pay to the State its actual damages according to Subsection A of this section. Written notice of said failure to perform shall be provided to the Contractor, by the Contract Administrator.

##### A. Operational Start Date – Damages

If, for any reason, the Contractor does not fully meet the operational start date of October 1, 2011 and a contract amendment delaying this date or start-up of a portion of the requirements listed has not been approved, then the Contractor shall be liable for costs incurred by the State to continue current operations and to complete the transition efforts. The Contractor shall forfeit any claims to reimbursement of monthly expenses or operational payments for that month and each month thereafter until the Contract Administrator approves operational readiness. Note that the anticipated start date may be set earlier than October 1, 2011 with reasonable notice from the State.

#### II. Service Level Agreements – Failure to Meet Performance Requirements

##### A. Non-compliance Remedies

It is the State's primary goal to ensure that the Contractor is delivering CCDF Intake services in accordance with the contract. To assess attainment of this goal, the State will monitor certain quality and performance standards and hold the Contractor accountable for being in compliance with contract terms. BCC will work collaboratively with the Contractor to maintain and improve service levels.

In the event that the Contractor fails to meet performance requirements set forth in the contract, any Attachment to the contract, or other standards established by State or Federal law, the State will provide the Contractor with a written notice of non-compliance and may require any of the corrective actions or remedies discussed in Section B below. The State will provide written notice of non-compliance to the Contractor within sixty (60) calendar days of the State's discovery of such non-compliance.

If BCC elects not to exercise a corrective action clause contained anywhere in the contract, or any Attachment to the contract in a particular instance, this decision must not be construed as a waiver of the State's right to pursue future assessment of that performance requirement and associated damages, including damages that, under the contract or any Attachment to the contract, may be retroactively assessed.

##### B. Corrective Actions

BCC may require corrective action(s) when the Contractor has failed to provide the requested services. The nature of the corrective action(s) will depend upon the nature, severity and duration of the deficiency and repeated nature of the non-compliance. The written notice of non-compliance corrective actions may be instituted in any sequence and include, but are not limited to, any of the following:

- Written Warning: BCC may issue a written warning and solicit a response regarding the Contractor's corrective action.
- Formal Corrective Action Plan: BCC may require the Contractor to develop a formal corrective action plan to remedy the breach. The corrective action plan must be submitted under the signature of the Contractor's chief executive and must be approved by BCC. If the corrective action plan is not acceptable, BCC may provide suggestions and direction to bring the Contractor into compliance.
- Withholding Full or Partial Invoice Payments: BCC may suspend invoice payments for one or more months when the State determines that the Contractor is non-compliant. BCC must give the Contractor written notice ten (10) business days prior to the suspension of invoice payments and specific reasons for non-

compliance that result in suspension of payments. The State may continue to suspend all invoice payments until non-compliance issues are corrected. Any invoice payments withheld from the Contractor will not be returned. Please refer to Sections C-D for more detail.

- Appointing Temporary Management to Replace Contractor Staff: The State may appoint a manager or managers to replace Contractor staff, or may assign temporary management of Contractor staff to the State's agent, if at any time the State determines that the Contractor can no longer effectively manage the services provided.
- Appointing Contractor's Responsibilities to Another Contractor: The State may assign the Contractor's responsibilities to one or more other Contractors, subject to consent by the Contractor that would gain the responsibility. The State must notify the original Contractor in writing of its intent to transfer responsibilities to another Contractor at least ten (10) business days prior to transferring any services.
- Contract Termination: The State reserves the right to terminate the contract, in whole or in part, due to the failure of the Contractor to comply with any term or condition of the contract, or failure to take corrective action as required by BCC to comply with the terms of the contract. The State must provide thirty (30) calendar days written notice and must set forth the grounds for termination.

## **C. Monthly Payment Forfeiture**

Both the State and the Contractor agree that maintaining client file accuracy is critical to the success of the CCDF Program. As a result, the Contractor will be subject to forfeiture of monthly payments according to the performance standards described in Subsections 1-2 below. Furthermore, the Contractor will be required to reimburse the State for any direct services paid to providers on family case files found to be ineligible. The State reserves the right to adjust performance measures and targets in future Contract years.

For the purposes of this section, an accurate file is a file with no errors. As such, a client file may either be found fully accurate or deemed inaccurate; there is no provision for partial accuracy of a file. Critical errors include errors that result in incorrect payment or nonpayment of CCDF Program funds for child care services. Administrative errors include errors that may not result in a repayment of CCDF Program funds for child care services, but need to be corrected for the purposes of maintaining accurate case file data.

### **1. Client File Accuracy**

An accuracy rate of less than 100% of client files reviewed by the State shall result in the forfeiture of the monthly payment to the Contractor for each active family case file found to have errors. The Contractor must reimburse the State for direct services paid to providers on files found to be ineligible. The State reserves the right to waive the forfeiture of case file monthly payments associated with administrative errors. Any and all errors identified must be corrected within the timeframes determined by the State.

### **2. Probation for Failing to Meet Client File Accuracy Standards**

In addition to the performance standards outlined in Subsection 1, the Contractor will be placed on a probationary status by the State for a period of three (3) months if the Contractor has two (2) consecutive months with an accuracy rate of less than 97% of client files reviewed. If after three (3) months on probation the accuracy rate of files reviewed remains less than 97%, the State may terminate its CCDF contract agreement pursuant to Section 41: Termination for Default, Subsection A of the contract agreement.

## **D. Suspension of Payments**

BCC may suspend invoice payments based on Contractor performance in the areas outlined in Subsection 1-3 below.

### **1. Hours of Operation**

Both the State and the Contractor agree that maintaining agreed-upon hours of operation at Intake facilities is critical to the success of the CCDF Program. In the event the Contractor fails to ensure that all Intake facilities maintain hours of operation agreed by the State, the State reserves the right to cease payment of Contractor invoices until the Contractor establishes to the State's satisfaction that agreed-upon hours of operation are again in place.

## **2. Staff Vacancies**

Both the State and the Contractor agree that maintaining adequate numbers of qualified personnel to perform the functions described in this Solicitation is critical to the success of the CCDF Program. As a result, the Contractor must ensure that it notifies the State in writing within five (5) business days of any CCDF Intake personnel's departure from, replacement within, or transfer to another part of the organization. If a position is being eliminated, resulting in a reduction in headcount of staff assigned to the CCDF Intake contract, such change must be approved in writing by the State.

Vacant positions must be filled within thirty (30) calendar days. If one or more positions remain unfilled for more than thirty (30) calendar days, the State reserves the right to cease payment of Contractor invoices until the vacant positions have been filled with State-approved replacement staff.

## **3. Reporting**

The reports referenced throughout Attachment D: Scope of Work must be submitted to the State according to State timelines. If the Contractor continues to submit reports in a manner that is inconsistent with State-defined timelines, the State reserves the right to cease payment of Contractor invoices.